

Rule 145. Actions on Behalf of Minors and Incompetent Persons**Rule 145.01 When Petition and Order are Required**

No part of the proceeds of any action or claim for personal injuries on behalf of any minor or incompetent person shall be paid to any person except under written petition to the court and written order of the court as hereinafter provided. This rule governs a claim or action brought by a parent of a minor, by a guardian ad litem or general guardian of a minor or incompetent person, or by the guardian of a dependent, neglected or delinquent child, and applies whether the proceeds of the claim or action have become fixed in amount by a settlement agreement, jury verdict or court findings, and even though the proceeds have been reduced to judgment.

Rule 145.02 Contents and Filing of Petition

The petition shall be verified by the parent or guardian, shall be filed before the court makes its order, and shall include the following:

- (a) The name and birth date of the minor or other incompetent person.
- (b) A brief description of the nature of the claim if a complaint has not been filed.
- (c) An attached affidavit, letter or records of a health care provider showing the nature of the injuries, the extent of recovery, and the prognosis if the court has not already heard testimony covering these matters.
- (d) Whether the parent, or the minor or incompetent person, has collateral sources covering any part of the principal and derivative claims, including expenses and attorneys fees, and whether subrogation rights have been asserted by any collateral source.
- (e) In cases involving proposed structured settlements, a statement from the parties disclosing the cost of the annuity or structured settlement to the tortfeasor.

(Amended effective January 1, 1993; amended effective January 1, 1994.)

Rule 145.03 Representation

(a) If the lawyer who presents the petition has been retained by the tortfeasor or its insurer, the lawyer shall disclose to the court and to the petitioner the nature of the representation, how he or she is being paid, the frequency with which the lawyer has been retained by the tortfeasor or insurer, and whether the lawyer is giving legal advice to the petitioner. The petition shall not be denied by the court solely because of the petitioner's representation.

(b) The court may, at its discretion, refer the petitioner to a lawyer selected by the petitioner (or by the court if petitioner requests or declines to select a lawyer), to evaluate the proposed settlement and advise the court whether the settlement is reasonable considering all relevant facts. The opinion shall be in writing, and the court shall provide a copy to the petitioner and all tortfeasors or their representative, regardless of whether a filing fee has been paid by the tortfeasor. This appointment shall be made pursuant to Minn. R. Evid. 706.

(c) The lawyer accepting the referral must agree not to represent the petitioner or the minor or accept a referral fee in the event that the petition is denied by the court.

(d) For the legal opinion thus rendered to the court, the tortfeasor or the insurer shall pay a reasonable sum ordered by the court; however, the insurer or tortfeasor may be reimbursed from settlement proceeds up to one half of the sum so ordered, also upon order of the court. An order for attorney's fees payment in excess of \$300.00 can issue only upon a court hearing with notice to the insurer or tortfeasor and the petitioner.

(e) The opinion of the referred-to lawyer shall not be binding upon the court.

Rule 145.04 Hearing on the Petition

The minor or incompetent person and the petitioner shall personally appear before the court at the hearing on the petition unless their appearance is specifically waived by the court because the action has been fully or partially tried or for other good cause. The reporter shall, when ordered by the court, keep a record of the hearing. The hearing shall be ex parte unless otherwise ordered.

Rule 145.05 Terms of the Order

The court's order shall:

(a) Approve, modify or disapprove the proposed settlement or disposition and specify the persons to whom the proceeds are to be paid.

(b) State the reason or reasons why the proposed disposition is approved if the court is approving a settlement for an amount which it feels is less than what the injuries and expenses, might seem to call for, e.g., limited insurance coverage, dubious liability, comparative fault or other similar considerations.

(c) Determine what expenses may be paid from the proceeds of any recovery by action or settlement, including the attorney's fee. Attorney's fees will not be allowed in any amount in excess of one-third of the recovery, except on a showing that: (1) an appeal to an appellate court has been perfected and a brief by the plaintiff's lawyer has been printed therein and (2) there has been an expenditure of time and effort throughout the proceeding which is substantially disproportionate to a one-third fee. No sum will be allowed, in addition to attorney fees, to reimburse any expense incurred in paying an investigator for services and mileage, except in those circumstances where the attorney's fee is not fully compensatory or where the investigation must be conducted in any area so distant from the principal offices of the lawyer so employed that expense of travel and related expense would be substantially equal to, or in excess of, usual investigating expenses.

(d) Specify what disposition shall be made of the balance of the proceeds of any recovery after payment of the expenses authorized by the court.

(1) The court may authorize investment of all or part of such balance of the proceeds in securities of the United States, or in an annuity or other form of structured settlement, including a medical assurance agreement, but otherwise shall order the balance of the proceeds deposited in one or more banks, savings and loan associations or trust companies where the deposits will be fully covered by Federal deposit insurance.

(2) In lieu of such disposition of the proceeds, the order may provide for the filing by the petitioner of a surety bond approved by the court conditioned for payment to the ward in a manner therein to be specified of such moneys as the ward is entitled to receive, including interest which would be earned if the proceeds were invested.

(e) If part or all of the balance of the proceeds is ordered deposited in one or more financial institutions, the court's order shall direct:

(1) that the defendant pay the sum to be deposited directly to the financial institution;

(2) that the account be opened in the name of the minor or incompetent person and that any deposit document be issued in the name of the minor or incompetent person;

(3) that the petitioner shall, at the time of depositing, supply the financial institution with a tax identification number or a social security number for the minor and a copy of the order approving settlement;

(4) that the financial institution forthwith acknowledge to the court receipt of the order approving settlement and the sum and that no disbursement of the funds will occur unless the court so orders, using the form substantially equivalent to Form 145.1;

(5) that the financial institution shall not make any disbursement from the deposit except upon order of the court;

(6) that a copy of the court's order shall be delivered to said financial institution by the petitioner with the remittance for deposit. The financial institution(s) and the type of investment therein shall be as specified in Minnesota Statutes, section 540.08, as amended. Two or more institutions shall be used if necessary to have full Federal deposit insurance coverage of the proceeds plus future interest; and time deposits shall be established with a maturity date on or before the minor's age of majority. If automatically renewing instruments of deposit are used, the final renewal period shall be limited to the date of the age of majority; and

(7) that the petitioner shall be ordered to file or cause to be filed timely state and federal income tax returns on behalf of the minor.

(f) Authorize or direct the investment of proceeds of the recovery in securities of the United States only if practicable means are devised comparable to the provisions of paragraphs (d) and (e) above, to insure that funds so invested will be preserved for the benefit of the minor or incompetent person, and the original security instrument be deposited with the court administrator consistent with paragraph (e) above.

(g) Provide that applications for release of funds, either before or upon the age of majority may be made using the form substantially similar to Form 145.2.

(Amended effective January 1, 1993; amended effective January 1, 2003.)

Rule 145.06 Structured Settlements

If the settlement involves the purchase of an annuity or other form of structured settlement, the court shall:

(a) Determine the cost of the annuity or structured settlement to the tortfeasor by examining the proposal of the annuity company or other generating entity;

(b) Require that the company issuing the annuity or structured settlement:

(1) Be licensed to do business in Minnesota;

(2) Have a financial rating equivalent to A. M. Best Co. A+, Class VIII or better;

(3) Has complied with the applicable provisions of Minnesota Statutes, sections 549.30 to 549.34;

or that a trust making periodic payments be funded by United States Government obligations; and

(4) If the company issuing the proposed annuity or structured settlement is related to either the settling party or its insurer, that the proposed annuity or structured settlement is at least as favorable to the minor or incompetent person as at least one other competitively-offered annuity obtained from an issuer qualified under this rule and not related to the party or its insurer. This

additional proposal should be for an annuity with the same terms as to cost and due dates of payments.

(c) Order that the original annuity policy be deposited with the court administrator, without affecting ownership, and the policy be returned to the owner of the policy when:

- (1) The minor reaches majority;
- (2) The terms of the policy have been fully performed; or
- (3) The minor dies, whichever occurs first.

(d) In its discretion, permit a "qualified assignment" within the meaning and subject to the conditions of Section 130(c) of the Internal Revenue Code;

(e) In its discretion, order the tortfeasor or its insurer, or both of them, to guarantee the payments contracted for in the annuity or other form of structured settlement; and

(f) Provide that:

(1) The person receiving periodic payments is entitled to each periodic payment only when the payment becomes due;

(2) That the person shall have no rights to the funding source; and

(3) That the person cannot designate the owner of the annuity nor have any right to control or designate the method of investment of the funding medium; and

(g) Direct that the appropriate party or parties will be entitled to receive appropriate receipts, releases or a satisfaction of judgment, pursuant to the agreement of the parties.

(Amended effective January 1, 1993; amended effective January 1, 1996; amended effective March 1, 2001; amended effective January 1, 2003.)

Cross Reference: Minn. R. Civ. P. 17.

Rule 145.07 General Guardians

When an action is brought by a general guardian appointed and bonded by a court of competent jurisdiction, the requirements of this rule may be modified as deemed desirable by the court because of bonding or other action taken by the appointing court, except that there must be compliance with the settlement approval requirements of Minnesota Statutes, section 540.08, or amendments thereof.

Cross Reference: Minn. R. Civ. P. 17.

Advisory Committee Comments - 2000 Amendment

This rule is derived from Minnesota Statutes 1990, section 540.08 and Rule 3 of the Code of Rules for the District Courts.

The Task Force considered it a thoughtful recommendation that a minor's social security number be required to be included on all minor settlement petitions. Such a requirement would make it easier to locate a minor at the time of reaching majority. The Task Force ultimately concluded, however, the privacy interests dictate that the inclusion of this number should not be mandatory. The information may nonetheless be required by the financial institution with which the funds are deposited, and many lawyers will routinely include it in petitions in order to facilitate locating the minor should the need arise.

The 1994 amendment of Rule 145.02(c) allows the filing of medical records in lieu of a full report of each health care provider where those records provide the information necessary to evaluate the settlement. This may be especially appropriate where the injuries are not severe, or where the cost of obtaining reports would represent a substantial portion of the settlement proceeds. The court can, in any case, require any further information or reports deemed necessary to permit the court to discharge its duty to evaluate the overall fairness of the settlement to the minor.

Rule 145.02(d) is new. It is designed to advise the court of factors to take into consideration when approving or disapproving a settlement on behalf of the minor or incompetent person. Rule 145.02(e) is added in 1992 to provide the court in the petition the information necessary for the court to make the determination required by Rule 145.06(a). Although the parties are the obvious source of the cost information necessary to make the cost determination, the rule explicitly requires the petition to include this information. This information must be disclosed by the parties, and not only the party filing the petition, as often the tortfeasor will have the only accurate information on this subject.

Rule 145.03 is new. It addresses a situation where a tortfeasor or insurer has negotiated a settlement with a minor's family or guardian, and court approval of that settlement is necessary. Oftentimes the plaintiff does not wish to incur attorney's fees to obtain that approval, so as a part of the settlement, the tortfeasor or the insurer makes the arrangements to draft and present the petition. The court needs to be satisfied that the settlement is fair. The Task Force discussed at length whether or not a lawyer hired and paid by an insurer or tortfeasor should be permitted to represent the minor or incompetent person to obtain the approval of the court. It was decided that the petitioner should not be compelled to obtain counsel, and that "arranged counsel" may appear; provided that there is full disclosure to the petitioner of the interests of the insurer or tortfeasor.

Rule 145.03(b) is new and is designed to provide a procedure for the court to obtain advice to evaluate the reasonableness of a settlement. The court may appoint a lawyer selected by the petitioner or the court may designate a lawyer of its own choice. In either case, where a referral is made under this section, the lawyer accepting the referral may not represent the petitioner to pursue the claim, should the petition be denied by the court. Rule 145.03(d) provides that the cost of the consultation provided for in Rule 145.03(b) shall be born equally by the petitioner and the tortfeasor or insurer.

Finally, Rule 145.03(d) provides that any opinions rendered by a selected lawyer on behalf of the minor or incompetent person are advisory only.

Rule 145.05(d) expands the types of investments that may be used in managing the settlement proceeds while retaining the requirements of security of investment. It incorporates Minnesota Statutes 1990, section 540.08 regarding structured settlements, and it allows that settlements may include a medical assurance agreement. A medical assurance agreement is a contract whereby future medical expenses of an undetermined amount will be paid by a designated person or entity.

Rule 145.05(e)(5) requires that funds placed in certificates of deposit or other deposits with fixed maturities have those maturities adjusted so they do not mature after the age of majority. This rule places the burden on the financial institution by the notice to be included in the order for deposit.

Rule 145.06 is new. It establishes criteria for approval of structured settlements, and it requires the court to determine the cost of the annuity to insure that the periodic payments reflect a cost comparable to a reasonable settlement amount. Where a minor or incompetent receives a verdict representing future damages greater than \$100,000 and the guardian determines that a structured settlement pursuant to Minnesota Statutes 1990, section 549.25 would be in the best interests of

the minor or incompetent person, this rule shall apply to the implementation of the election pursuant to the statute. The amendment of the rule in 1995 (effective January 1, 1996) is intended to make it clear that it is important that the original annuity policy be retained by the court administrator; and that this is for the purpose of security, not establishing any ownership interest which might affect the tax treatment of the settlement.

Rule 145.06(b) is modified by amendment in 2000. The amendment is intended to require the court approving a minor settlement that includes a structured settlement provision to verify that the annuity issuer is licensed to do business and that Minnesota Statutes 1998, sections 549.30 to 549.34 is followed. The amendment is not intended to impose any additional substantive requirements, as compliance with statutes is assumed under the current rule. The rule will require the trial court to verify the fact of compliance, however, and will probably require submitting this information to the court.

Advisory Committee Comment - 2002 Amendment

Rule 145.05 is revamped to create a new procedure for handling the deposit of funds resulting from minor settlements. The new rule removes provisions calling for deposit of funds in "passbook" savings accounts, largely because this form of account is no longer widely available from financial institutions. The revised rule allows use of statement accounts, but requires that the financial institution acknowledge receipt of the funds at the inception of the account. A form for this purpose is included as Form 145.1. Additionally, the rule is redrafted to remove inconsistent provisions. Under the revised rule, release of funds is not automatic when the minor reaches majority; a separate order is required. A form to implement the final release of funds, as well as any permitted interim release of funds, is included as Form 145.2.

Rule 145.06(b)(4) is a new provision to require at least two competitive proposals for a structured settlement. This requirement applies only when one of the proposals is for an annuity issued by the settling party, its liability insurer, or by an insurer related to either of them. The rule requires that the competitive bids be issued by annuity companies that would be qualified to issue an annuity that complies with the requirements of Rule 145.06. In order to permit the trial court to determine that the proposed settlement adequately provides for the interests of the minor, the competitive bids must be for annuities with comparable terms. The rule requires only a second proposal, but permits the court to require additional proposals or analysis of available proposals in its discretion. The rule, as revised, does not direct how the trial court should exercise its discretion in approving or disapproving the proposed structure settlement. It is intended, however, to provide the court some information upon which it can base the decision.